

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NICHIAS TURBAN, on behalf of himself and  
others similarly situated,

Plaintiff,

v.

BAR GIACOSA CORP. d/b/a BAR  
PITTI and GIOVANNI TOGNOZZI,

Defendants.

**Civil Action No.: 19-cv-1138 (JMF)**

**NOTICE OF PENDING COLLECTIVE ACTION LAWSUIT WITH THE  
OPPORTUNITY TO JOIN**

***THIS IS A COURT-AUTHORIZED NOTICE  
THIS IS NOT A SOLICITATION OR ADVERTIZING FROM A LAWYER***

- To:** All persons who were employed at Bar Pitti as service employees, other than service managers, at any time between February 6, 2016 and the present.
- Re:** Opportunity to join a lawsuit asserting violations of a federal law known as the Fair Labor Standards Act (“FLSA”) against Bar Pitti for its alleged failure to pay the proper minimum wage and overtime compensation.

**I. PURPOSE OF THIS NOTICE**

The purpose of this Notice is to advise you that a lawsuit has been filed against Bar Pitti to recover alleged unpaid minimum wages and overtime compensation, and to advise you that you may be eligible to join this lawsuit. The Court has authorized this Notice so that the other individuals who are “similarly situated” to the Named Plaintiff, Nichias Turban, can become aware of their rights and join the lawsuit. The lawsuit was filed on February 6, 2019 against Defendant Bar Giacosa Corp. d/b/a Bar Pitti and Giovanni Tognozzi (collectively, “Defendants”).

Defendants Bar Pitti and Mr. Giovanni vigorously deny any wrongdoing and/or liability and deny that any employee was underpaid for his or her work at any time. No determination has been made that anyone is owed any wages, and the Court is not endorsing the merits of this lawsuit or advising you to participate in this lawsuit. You are under no obligation to respond to this notice.

## **II. DESCRIPTION OF THE LAWSUIT**

On February 6, 2019, a former employee of Bar Pitti, Plaintiff Nichias Turban, filed this lawsuit against Defendants in the United States District Court for the Southern District of New York (“SDNY”). The SDNY case number for the lawsuit is No. 19-cv-1138, and the District Judge assigned to the lawsuit is Hon. Jesse M. Furman.

Plaintiff filed this lawsuit on behalf of himself and all other past and present service employees, other than service managers, who were employed at Bar Pitti at any time during the past three (3) years. A portion of the lawsuit alleges a violation under the FLSA. With respect to that portion of the lawsuit, Plaintiff alleges that when he worked at Bar Pitti, Defendants (1) failed to pay him for all hours worked in excess of 40 per workweek; and (2) did not pay him the appropriate overtime wage for those hours worked in excess of 40 per workweek. Plaintiff alleges that these practices are in violation of the FLSA and seeks back pay for unpaid minimum wages and overtime compensation, plus liquidated damages afforded under the FLSA, prejudgment interest, reasonable attorneys’ fees, and litigation costs.

Bar Pitti has denied any wrongdoing or liability and contests all claims that have been asserted. Bar Pitti maintains that it has paid all its employees for all hours worked in excess of 40 per workweek, and that Bar Pitti has paid all its employees in excess of minimum wage levels and proper overtime compensation for all hours worked over 40.

The Court has not yet decided who is right and who is wrong. The Court has authorized this Notice to give the opportunity to employees who may have been affected by the alleged violations to join this collective action lawsuit.

## **III. WHO MAY JOIN THIS LAWSUIT**

The named Plaintiff seeks to sue on behalf of:

1. himself; and
2. any similarly situated employee who is or has been employed by Bar Pitti as a service employee, other than service managers, within the last three (3) years.

If you have already brought a lawsuit against Bar Pitti, or filed a complaint against Bar Pitti with the New York State Department of Labor or the U.S. Department of Labor for alleged failure to pay minimum wages and/or overtime compensation owed to you, you may not be eligible to join this lawsuit.

## **IV. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

You have been identified as an individual who may have a claim against Bar Pitti similar to the claim made by the Plaintiff in this case. You may have a right to assert that claim against Bar Pitti in the present lawsuit. You also have the right to initiate your own lawsuit, obtain counsel of our choosing, or you may choose not to sue Bar Pitti at all.

You may participate in this lawsuit even if you are not authorized to work in the United States of America legally.

You may join this lawsuit by filling out and sending the “Consent to Join” form attached to this Notice to the United States District Court, Southern District of New York at the following address using the enclosed envelope:

Clerk of Court  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

The Consent to Join form must be mailed to the federal court on or before **[date 60 days from mailing of Notice]**. If you do not mail the Consent to Join form before this deadline, you will not be able to participate in this lawsuit.

If you return the Consent to Join form attached to this Notice to the Clerk of the Court, you are agreeing to: (1) designate the named Plaintiff, Nichias Turban, as you agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, and all other matters pertaining to this lawsuit and (2) be bound by the attorneys’ fee agreement between Plaintiff Turban and his attorneys, Joseph & Kirschenbaum LLP. Decisions made and agreements entered into by Plaintiff Turban relating to the lawsuit will be binding on you if you join the lawsuit.

## **V. EFFECT OF JOINING THIS LAWSUIT**

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable.

If you elect to join this case, you may be required to participate in the discovery process, including responding to written interrogatories (questions) and document production requests, testifying under oath at a deposition within the Southern District of New York and, potentially, at trial. If you have retained records relating to your employment with Defendants, such as copies of paychecks, W-2s, time records, tips received, or other documents or communications regarding your employment and hours you worked for Defendants, you are obligated to preserve and produce such documents should you elect to join this case.

The attorneys for the named Plaintiff are being paid on a contingency fee basis, which means that if there is no recovery, there will be no attorneys’ fee. If there is a recovery, the attorneys for the named Plaintiff will receive part of any settlement obtained or money judgment entered in favor of all members of the collective action.

## **VI. YOUR RIGHT TO NOT PARTICIPATE IN THE LAWSUIT**

If you choose not to join the lawsuit, you will not be affected by any judgment or settlement rendered in this case. The statute of limitations will continue to run on your claim until you join this lawsuit or file your own. Claims under the FLSA must be filed in court (either by filing the Consent to Join form to become a party plaintiff or by filing your own lawsuit) within two (2) years of the date the claim accrues, unless the employer’s violation of the FLSA was “willful,” in which case the claim must be brought within three (3) years.

## **VII. NO RETALIATION PERMITTED**

Federal and state law prohibit any employer from retaliating against you, discharging you, or in any manner discriminating against you because you decide to join this lawsuit or have in any other way exercised your rights under the FLSA. Bar Pitti will not take any adverse action against any current or former employee who participates in this case in any way.

## **VIII. YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you wish to join this lawsuit as a party plaintiff, it is entirely your decision as to whether you prefer to be represented by the Plaintiff's attorneys or by an attorney of your own choosing. If you join this lawsuit and do not hire your own lawyer or ask to represent yourself, you will be represented by Plaintiff's attorneys listed below:

D. Maimon Kirschenbaum  
Lucas C. Buzzard  
JOSEPH & KIRSCHENBAUM LLP  
32 Broadway, Suite 601  
New York, New York 10004  
Tel: (212) 688-5640  
Email: lucas@jk-llp.com

You do not have to pay out-of-pocket for the services of Plaintiff's attorneys or for any of the costs of bringing this lawsuit. As more fully described in the Consent to Join form, the attorneys' fee arrangement for this case provides that Plaintiff's counsel are handling this matter on a contingency basis, *i.e.*, that the attorneys' fees and costs will be determined on a percentage basis based on the recovery obtained for Plaintiff and others who join the lawsuit. The attorneys' fee arrangement also provides that Plaintiff will not be responsible for fees and/or costs if there is no recovery. The agreement further provides that at the conclusion of the case, Plaintiff's counsel will make an application to the Court for the recovery of fees and costs, that the Court has discretion as to the amount of fees to award, and that the fees may be as much as one-third of any settlement fund or judgment, in addition to costs and expenses.

If you want to join this lawsuit by do not want to be represented by Joseph & Kirschenbaum LLP, you have the right to hire your own attorney, at your own cost. You may also represent yourself by proceeding "pro se", which means on your own, without an attorney. If you choose to hire your own attorney or proceed pro se without an attorney, either you or your attorney must file a separate consent form by **[date that is 60 days from mailing of notice]**.

## **IX. FURTHER INFORMATION**

Plaintiff's Complaint and Defendant's Amended Answer with Counterclaims filed in this lawsuit are available for inspection at the office of the Clerk of Court or by contacting Plaintiff's counsel at (212) 688-5640 who will forward a copy to you. If you have any questions about this Notice, the lawsuit, or the procedure for joining the lawsuit, you may contact Plaintiff's or Defendants' counsel at:

COUNSEL FOR PLAINTIFFS

Lucas Buzzard  
JOSEPH & KIRSCHENBAUM LLP  
32 Broadway, Suite 601  
New York, NY 10004  
Tel: (212) 688-5640

COUNSEL FOR DEFENDANTS

Robert M. Tuchman  
KLEINBERG, KAPLAN, WOLFF &  
COHEN, P.C.  
551 Fifth Avenue, 18<sup>th</sup> Floor  
New York, NY 10176  
Tel: (212) 986-6000

**THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE HON. JESSE M. FURMAN, U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF PLAINTIFF'S CLAIMS OR THE DEFENDANTS' DEFENSES.**

**PLEASE DO NOT CONTACT THE COURT, THE COURT'S CLERK, OR THE JUDGE ABOUT THIS CASE. THEY ARE NOT PERMITTED TO ADDRESS YOUR INQUIRIES OR QUESTIONS.**

Dated: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NICHIAS TURBAN, on behalf of himself and  
others similarly situated,

Plaintiff,

v.

BAR GIACOSA CORP. d/b/a BAR  
PITTI and GIOVANNI TOGNOZZI,

Defendants.

**Civil Action No.: 19-cv-1138 (JMF)**

**CONSENT TO JOIN**

I, \_\_\_\_\_, am or was employed by Bar Pitti after February 6, 2016. I hereby consent to sue Defendants in this Fair Labor Standards Act case. I understand that this lawsuit seeks unpaid wages that may be owed to me and that by joining this lawsuit I will become a plaintiff pursuant to the Fair Labor Standards Act. I agree to be bound by any adjudication in the lawsuit whether it is favorable or unfavorable. I understand that, by filing this form, I am voluntarily becoming a party plaintiff to this action, with the obligations and rights of a plaintiff in a case explained in this form. I wish to preserve and pursue any claims that I may have to the greatest extent possible. Therefore, I expressly consent to representation by the named plaintiff and the bringing of any claims I may have under the Fair Labor Standards Act against the Defendants in this action.

I authorize Plaintiff's counsel, Joseph & Kirschenbaum LLP, to represent me in this case. By choosing Plaintiff's counsel and signing and returning this consent to sue, I understand that I will be represented by Joseph & Kirschenbaum LLP without prepayment of costs or attorneys' fees. I understand that if plaintiffs are successful, costs expended by Joseph & Kirschenbaum LLP on my behalf may be deducted pro rata from my settlement or judgment first. I understand that Joseph & Kirschenbaum LLP may petition the court for an award of attorneys' fees and costs to be paid by Defendants on my behalf. I understand that the fees retained by Joseph & Kirschenbaum will be either the amount of fees received from the Defendants or 1/3 of the settlement or judgment amount, whichever is greater. I understand that if the case is not successful, I will not be obligated to pay any fees or costs to Joseph & Kirschenbaum LLP.

I understand that I am permitted to proceed with an alternative counsel of my choosing at my own expense, and that that I may proceed "pro se," which means on my own, without an attorney.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Full Name (printed): \_\_\_\_\_

Work Name (if different): \_\_\_\_\_

**The following information is required but will not be publicly filed or otherwise made available to the public:**

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Approximate Dates of Employment: \_\_\_\_\_

**IF YOU WISH TO SEEK RECOVERY AS PART OF THIS LAWSUIT, YOU MUST MAIL THE ENCLOSED CONSENT TO JOIN LAWSUIT FORM TO:**

Clerk of Court  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**THE LAST DAY TO MAIL THIS CONSENT TO JOIN LAWSUIT FORM IS:**

**[date 60 days from mailing]**

**CONSENT TO JOIN FORMS MAILED AFTER [DATE] WILL BE REJECTED  
UNLESS GOOD CAUSE IS SHOWN FOR THE DELAY**